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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL  
2016 OCT 14 PM 2 26

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR A  
HEARING TO DETERMINE THE FAIR VALUE OF  
THE UTILITY PROPERTY OF THE COMPANY  
FOR RATEMAKING PURPOSES, TO FIX A JUST  
AND REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE SCHEDULES  
DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF FUEL AND PURCHASED  
POWER PROCUREMENT AUDITS FOR ARIZONA  
PUBLIC SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

**PROCEDURAL ORDER SETTING  
PROCEDURAL CONFERENCE  
AND GRANTING INTERIM  
PROTECTIVE ORDER**

**BY THE COMMISSION:**

On June 1, 2016, Arizona Public Service Company (“APS” or “Company”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned Rate Case Application.

Parties who have previously been granted intervention in this docket are Richard Gayer, Patricia Ferré, Warren Woodward, IO Data Centers, LLC (“IO”), Freeport Minerals Corporation (“Freeport”), Arizonans for Electric Choice and Competition (“AECC”), Sun City Home Owners Association (“Sun City HOA”), Western Resource Advocates (“WRA”), Arizona Investment Council (“AIC”), Arizona Utility Ratepayer Alliance (“AURA”), Property Owners and Residents Association, Sun City West (“PORA”), Arizona Solar Energy Industries Association (“AriSEIA”), Arizona School Boards Association (“ASBA”) and Arizona Association of School Business Officials (“AASBO”) (collectively “ASBA/AASBO”), Cynthia Zwick, Arizona Community Action Association (“ACAA”), Southwest Energy Efficiency Project (“SWEEP”), the Residential Utility Consumer Office (“RUCO”), Vote Solar, Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District (collectively, “ED8/McMullen”), The Kroger Co. (“Kroger”), Tucson Electric Power

1 Company (“TEP”), Pima County, Solar Energy Industries Association (“SEIA”), the Energy Freedom  
 2 Coalition of America (“EFCA”), Wal-Mart Stores, Inc. and Sam’s West, Inc. (collectively,  
 3 “Walmart”), Local Unions 387 and 769 of the International Brotherhood of Electrical Workers, AFL-  
 4 CIO (collectively, “the IBEW Locals”), Noble Americas Energy Solutions LLC (“Noble Solutions”),  
 5 the Arizona Competitive Power Alliance (“the Alliance”), Electrical District Number Six, Pinal  
 6 County, Arizona (“ED 6”); Electrical District Number Seven of the County of Maricopa, State of  
 7 Arizona (“ED7”), Aguila Irrigation District (“AID”), Tonopah Irrigation District (“TID”); Harquahala  
 8 Valley Power District (“HVPD”); and Maricopa County Municipal Water Conservation District  
 9 Number One (“MWD”) (collectively, “Districts”).

10 On June 14, 2016, APS filed a Notice of Errata.

11 On June 17, 2016, ACAA filed a Consent to Email Service.<sup>1</sup>

12 On June 23, 2016, APS filed its Second Notice of Errata.

13 On June 24, 2016, APS filed a copy of the notice it provided to parties of record of the Rate  
 14 Case Technical Conferences scheduled for July 20, 2016, August 23, 2016, September 29, 2016, and  
 15 October 26, 2016.

16 On July 1, 2016, the Commission’s Utilities Division (“Staff”) issued a Letter of Sufficiency  
 17 pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-103, classifying APS as a Class A utility.

18 On July 5, 2016, Kroger filed a Consent to Email Service.<sup>2</sup>

19 On July 22, 2016, a Rate Case Procedural Order was issued setting the procedural schedule and  
 20 associated procedural deadlines for this matter, granting several interventions, and granting several  
 21 requests to receive service by email.

22 On August 1, 2016, a Procedural Order was issued granting Staff’s request to consolidate the  
 23 above-captioned dockets,<sup>3</sup> correcting typographical errors in the July 22, 2016 Rate Case Procedural  
 24 Order, granting interventions, and granting requests to receive service by email.

25 On August 3, 2016, the Federal Executive Agencies (“FEA”) filed an Application to Intervene,

26 <sup>1</sup> ACAA has not sent a verifying email to [HearingDivisionServicebyEmail@azcc.gov](mailto:HearingDivisionServicebyEmail@azcc.gov) from the email address appearing in  
 27 its Consent to Email Service, and therefore its request cannot be approved yet.

<sup>2</sup> Kroger has not sent a verifying email to [HearingDivisionServicebyEmail@azcc.gov](mailto:HearingDivisionServicebyEmail@azcc.gov) from the email address appearing in  
 28 its Consent to Email Service, and therefore its request cannot be approved yet.

<sup>3</sup> Docket No. E-01345A-16-0123 was opened on April 11, 2016.

1 and Karen S. White filed a Motion to Associate Counsel *Pro Hac Vice* to associate Thomas A. Jernigan  
2 as counsel for FEA in this matter pursuant to Arizona Supreme Court Rule 38(a)(3)(C).

3 On August 5, 2016, APS filed a Motion for Clarification and Extension of Time.

4 On August 9, 2016, a Procedural Order was issued granting APS's Motion for Clarification and  
5 Extension of Time. The Procedural Order also granted several interventions and approved a consent  
6 to email service.

7 On August 11, 2016, EFCA filed a Consent to Email Service.

8 On August 24, 2016, APS filed a copy of the presentation from its second Rate Case Technical  
9 Conference.

10 On August 25, 2016, Correspondence from Commissioner Bob Burns was filed in the docket.

11 On September 6, 2016, a Procedural Order was issued granting the Districts' Application for  
12 Leave to Intervene, and granting requests for service by email.

13 On September 6, 2016, Constellation New Energy, Inc. ("CNE") filed an Application for Leave  
14 to Intervene.

15 On September 6, 2016, Warren Woodward filed two sets of comments.

16 On September 9, 2016, APS filed correspondence regarding subpoenas dated August 25, 2016.

17 On September 9, 2016, APS filed a Motion to Sever.

18 On September 9, 2016, APS filed a Motion to Quash, or in the Alternative, to Decline to Hear.

19 On September 12, 2016, APS filed correspondence regarding subpoenas dated August 25, 2016.

20 On September 13, 2016, APS filed an Affidavit of Publication and Proof of Mailing.

21 On September 13, 2016, Correspondence from Commissioner Bob Burns was filed in the  
22 docket.

23 On September 27, 2016, Karen S. White filed a Motion to Associate Counsel *Pro Hac Vice* to  
24 associate Thomas A. Jernigan as counsel for FEA in this matter pursuant to Arizona Supreme Court  
25 Rule 38(a), to which was attached a certification of service indicating that the Motion was served on  
26 all parties.

27 On September 30, 2016, Direct Energy, Inc. ("Direct Energy") filed an Application for Leave  
28 to Intervene.

On October 3, 2016, Warren Woodward filed a Notice of Change of Address.

On October 3, 2016, EFCA filed a Notice of Deposition of Barbara D. Lockwood.

On October 6, 2016, APS filed a Motion for Procedural Conference and Interim Protective Order.

On October 7, 2016, Timothy M. Hogan filed Motions to Associate Counsel *Pro Hac Vice* to associate Chinyere Ashley Osuala and David Bender as counsel for Vote Solar in this matter pursuant to Arizona Supreme Court Rule 38(a)(3)(C).

On October 11, 2016, counsel for Noble Solutions, CNE, and Direct Energy filed a Notice of Change of Address.

On October 12, 2016, AARP filed an Application to Intervene and a Motion to Associate Counsel *Pro Hac Vice* to associate John B. Coffman as counsel for AARP in this matter pursuant to Arizona Supreme Court Rule 38(a)(3)(C).

On October 12, 2016, EFCA filed its Response to Motion for Procedural Conference and Interim Protective Order.

On October 13, 2016, Warren Woodward filed comments.

Numerous public comments have been filed.

#### Interventions

No party has objected to the intervention requests filed by the FEA, CNE, or Direct Energy. Accordingly, the FEA, CNE and Direct Energy should be granted intervention.

The October 12, 2016 intervention request and Motion to Associate Counsel *Pro Hac Vice* filed by AARP will be ruled upon once sufficient time has elapsed to allow for any objections to be filed.

#### Requests to Participate *Pro Hac Vice*

The Motion filed by Karen S. White requesting authority to associate Thomas A. Jernigan *pro hac vice* as counsel for FEA in this matter lists Ms. White as the designated member of the Arizona State Bar with whom communication may be made, and upon whom papers should be served. Attached to the filing is a copy of the verified Application for Appearance *Pro Hac Vice* filed with the State Bar of Arizona for Mr. Jernigan; a copy of the certificate of good standing from the jurisdiction in which he has been admitted to practice law; and a copy of the Notice of Receipt of Complete Application

1 from the State Bar of Arizona.

2 In the discretion of the Commission, Mr. Jernigan should be permitted to appear and participate  
3 *pro hac vice* in this matter on behalf of FEA.

4 The Motions filed by Timothy M. Hogan requesting authority to associate Chinyere Ashley  
5 Osuala and David Bender *pro hac vice* as counsel for Vote Solar in this matter list Mr. Hogan as the  
6 designated member of the Arizona State Bar with whom communication may be made, and upon whom  
7 papers should be served. Attached to the filings are copies of the verified Applications for Appearance  
8 *Pro Hac Vice* filed with the State Bar of Arizona for Ms. Osuala and Mr. Bender; copies of the  
9 certificates of good standing from the jurisdictions in which they have been admitted to practice law;  
10 and copies of the Notices of Receipt of Complete Application from the State Bar of Arizona.

11 In the discretion of the Commission, Ms. Osuala and Mr. Bender should be permitted to appear  
12 and participate *pro hac vice* in this matter on behalf of Vote Solar.

13 Motion for Procedural Conference and Interim Protective Order

14 APS filed its October 6, 2016 Motion for Procedural Conference and Interim Protective Order  
15 (“Motion”) in response to EFCA’s October 3, 2016 Notice of Deposition of Barbara D. Lockwood<sup>4</sup>  
16 scheduling the deposition for October 19, 2016, at 9:00 a.m. (“Notice of Deposition”). APS attached  
17 to its Motion a September 29, 2016 email exchange between counsel for EFCA and counsel for APS.  
18 APS states in its Motion that EFCA requested, on September 28, 2016, that APS check Ms.  
19 Lockwood’s availability for a deposition on October 19, 2016. APS states that it informed EFCA that  
20 Ms. Lockwood was unavailable on that date, and that APS requested that EFCA defer the deposition.

21 The Motion requests that (1) a procedural conference be scheduled to discuss and establish a  
22 discovery plan; and (2) an interim protective order be issued pending the establishment of a discovery  
23 plan.

24 On October 12, 2016, EFCA filed its Response to the Motion. EFCA is opposed to restrictions  
25 on discovery and requests that APS’s Motion be denied.

26 While no other parties to this case filed a Response to APS’s Motion, they may be affected by  
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28 <sup>4</sup> APS prefiled the Direct Testimony of Ms. Lockwood with the Rate Case Application on June 1, 2016.

1 a determination on this discovery dispute between APS and EFCA. Parties should have adequate notice  
2 of, and an opportunity to participate in, discussions involving the scheduling of Ms. Lockwood's  
3 deposition. A procedural conference should therefore be scheduled. Due to timing issues, it is  
4 necessary to grant APS's request for an interim protective order regarding the Notice of Deposition.

5 IT IS THEREFORE ORDERED that Arizona Public Service Company's request for the  
6 issuance of an interim protective order regarding the Energy Freedom Coalition of America's October  
7 3, 2016 Notice of Deposition of Barbara D. Lockwood is hereby granted, in order to allow time for the  
8 scheduling of a procedural conference to discuss discovery issues, including but not limited to the  
9 deposition of Barbara D. Lockwood.

10 IT IS FURTHER ORDERED that Barbara Lockwood is excused from appearing at the time  
11 and place noticed in the Energy Freedom Coalition of America's October 3, 2016 Notice of Deposition  
12 of Barbara D. Lockwood.

13 IT IS FURTHER ORDERED that Arizona Public Service Company shall file its Reply to the  
14 Energy Freedom Coalition of America's Response on or before October 18, 2016.

15 IT IS THEREFORE ORDERED that **a procedural conference in this matter shall be held**  
16 **on October 20, 2016, at 10:00 a.m.** or as soon thereafter as is practicable, at the Commission's offices,  
17 1200 West Washington Street, Hearing Room No. 1, Phoenix, AZ, for the purpose of discussing  
18 discovery issues, including but not limited to the deposition of Barbara D. Lockwood.

19 IT IS FURTHER ORDERED that Federal Executive Agencies, Constellation New Energy, Inc.,  
20 and Direct Energy, Inc. are hereby granted intervention.

21 IT IS FURTHER ORDERED that Thomas Jernigan is admitted *pro hac vice* in the above-  
22 captioned matter.

23 IT IS FURTHER ORDERED that Mr. Jernigan's address for service of papers and other  
24 communication is:

25 Thomas A. Jernigan  
26 Federal Executive Agencies – U.S. Air Force Utility Law Field Support Center  
27 139 Barnes Drive, Suite 1  
28 Tyndall Air Force Base, FL 32403

IT IS FURTHER ORDERED that the address for service of papers and other communication

1 for the Arizona-licensed attorney designated as local counsel for Mr. Jernigan is:

2 Karen S. White  
3 139 Barnes Drive, Suite 1  
4 Tyndall Air Force Base, FL 32403

5 IT IS FURTHER ORDERED that Chinyere Ashley Osuala and David Bender are admitted *pro*  
6 *hac vice* in the above-captioned matter.

7 IT IS FURTHER ORDERED that Ms. Osuala's and Mr. Bender's address for service of papers  
8 and other communication is:

9 Chinyere Ashley Osuala  
10 David Bender  
11 Earthjustice  
12 1625 Massachusetts Ave. NW, Suite 702  
13 Washington, DC 20036

14 IT IS FURTHER ORDERED that the address for service of papers and other communication  
15 for the Arizona-licensed attorney designated as local counsel for Ms. Osuala and Mr. Bender is:

16 Timothy M. Hogan  
17 Arizona Center for Law in the Public Interest  
18 514 W. Roosevelt St.  
19 Phoenix, AZ 85003

20 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
21 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
22 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings  
23 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for  
24 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
25 Law Judge or the Commission.

26 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
27 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

28 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
Communications) applies to this proceeding and shall remain in effect until the Commission's Decision  
in this matter is final and non-appealable.

IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Rate Case**  
**Procedural Order** issued in this matter on **July 22, 2016**, for additional information regarding the

1 process to consent to service by email. Information regarding Consent to Email Service is also  
2 available on the Commission's website ([www.azcc.gov](http://www.azcc.gov)) by clicking on "Email Service Consent."

3 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or  
4 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
5 hearing.

6 DATED this 14<sup>th</sup> day of October, 2016.

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9 TEENA J. BILIAN  
10 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE  
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On this 14<sup>th</sup> day of October, 2016, the foregoing document was filed with Docket Control as a Procedural Order – Sets a Procedural Schedule/Conference, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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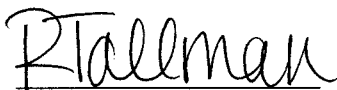
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